

TCEQ DOCKET NO. 2014-0124-WR
SOAH DOCKET NO. 582-14-2123

LOWER COLORADO RIVER	§	BEFORE THE STATE OFFICE
AUTHORITY'S PETITION	§	OF
FOR AN EMERGENCY ORDER	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S COMMENTS AND EXCEPTIONS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files these comments and exceptions to the Proposal for Decision (PFD) recommended by the Administrative Law Judges (ALJs). The Executive Director supports the ALJs' findings that emergency conditions exist which present an imminent threat to public health and safety and which necessitate this emergency order. While the Executive Director's technical review showed that LCRA's requested trigger level of 1.1 million acre feet (million AF) is reasonable, we recognize that a trigger level of 1.4 million AF provides additional assurance for firm customers during these persistent drought conditions.

The Executive Director did not evaluate such higher trigger levels because our technical review indicated that LCRA's requested trigger level of 1.1 million AF is reasonable for this emergency relief. If the combined storage of the lakes recovers to 1.1 million AF on March 1 of this year and downstream releases are made, our analysis shows that combined storage would not fall to 600,000 acre feet for 12 to 18 months even with continued drought conditions. Additionally, the Executive Director's order is structured so that the amount of any releases are limited based on the combined storage amount.

For an emergency order with a duration of no more than 180 days, the Executive Director supports the 1.1 million AF as a reasonable approach. Regardless of how the next several months play out, the LCRA will likely have to apply once again for emergency relief at the end of 2014, if not sooner, unless the Water Management Plan is amended by that time. Any subsequent request for relief by LCRA to modify the curtailment trigger would be based on existing conditions at that time. However, the Executive Director is in agreement with many other parties that this type of emergency management of a water plan is not ideal and is working expeditiously to conclude work on amendments to LCRA's 2010 Water Management Plan.

Whether the 1.4 million AF trigger level for this emergency order is affirmed by the Commission, the Executive Director would like to once again stress that this emergency order and its findings and conclusions should not be precedent or binding on the Executive Director as he completes his review of the application for amendments to the 2010 Water Management Plan.

EXCEPTIONS

The Executive Director has exceptions or comments to specific Findings of Fact in the proposed Order. These are set out below:

1. Amended Finding of Fact No. 2: The ED requests that the words “part of LCRA’s water rights and is” be added in the last line of the amended finding. This is to clarify that the WMP is considered to be part of LCRA’s water rights. The change would be as follows:

LCRA has the right to divert and use up to 1.5 million AF from Lakes Buchanan and Travis under Certificates of Adjudication Nos. 14-5478 and 14-5482. By court order LCRA has developed a WMP, Permit No. 5838, currently dated 2010 which is part of LCRA’s Water Rights and is required by these certificates.

2. New Finding of Fact No. 30a: This finding of fact is unclear. Therefore, the Executive Director requests that this finding be clarified.

The interruptible stored water release would have been much greater than the relatively small amount to get storage above 850,000 AF and thus would have taken the reservoirs significantly lower in 2013 than the 637,000 AF level that was reached on September 19, 2013.

3. New Finding of Fact No. 30b: The Executive Director requests that “drought model results” be replaced with “the City of Austin’s Drought Model results” in the finding for the purposes of accuracy.

Because of the duration and increasing intensity of the drought, the City of Austin’s Drought Model results indicate ~~the included droughts model results~~ that an 850,000 AF trigger for March 1, 2014 that would permit large interruptible releases would have serious consequences for combined storage. If 2014 experiences inflows similar to 2011, then combined storage would drop below 400,000 AF in just a year.

4. New Finding of Fact No. 30c: Amend the first sentence to change “would” to “could,” which makes the sentence more accurate. Delete the last sentence because the Executive Director believes that a 1.1 million AF trigger level for releases is reasonable for the duration of this emergency order as it will push a possible DWDR out 12 to 18 months. The finding would read as follows:

At 1.1 million AF, with a continuation of the current hydrology, lake storage ~~would~~ could drop within approximately a year to emergency levels and continue downward from there. ~~Therefore a refill amount of at least 1.4 million AF is necessary to avoid a rapid return to emergency levels.~~

5. New Finding of Fact No. 30f: Add to the first sentence “or that the cumulative inflow deficit since the beginning of the drought exceeds the envelope curve for cumulative inflow deficits by at least 5% for six consecutive months” because the WMP includes this other criteria for LCRA to come out of a DWDR. Also this is a LCRA Board decision. See LCRA-Ex. 1, Attachment E, p. 4-34 (LCRA’s 2010 WMP). The finding would read as follows:

If storage has fallen below 600,000 AF in September 2013, LCRA’s current WMP requires a refill to 1.4 million AF or that the cumulative inflow deficit since the beginning of the drought exceeds the envelope curve for cumulative inflow deficits by at least 5% for six consecutive months before resuming any interruptible stored water releases. The LCRA Board can change the trigger amount prior to declaring a DWDR.

6. New Finding of Fact No. 41a: The Executive Director excepts to this finding because he has not evaluated any ramifications of compliance with LCRA’s firm customers’ Water Conservation Plan and Drought Contingency Plans. The Executive Director questions whether operational issues that may result from taking conservation and drought measures should be considered as a threat to public health and safety for this emergency order. Conservation and Drought contingency are required and made for the public welfare. The Executive Director requests that the finding be stricken.

~~The conservation and drought contingency plan measures undertaken by LCRA’s firm water customers have reduced water usage, but have also already caused operational problems for many utility systems such as low chlorine levels in the distribution system and the inability to perform system flushing, threatening public health and safety.~~

7. New Finding of Fact No. 42f: The Executive Director has the same exception to this finding as it has for Finding of Fact No. 41a. He has not evaluated any ramifications of complying with LCRA’s firm customers’ Water Conservation Plan and Drought Contingency Plans and he questions whether operational issues that may result from taking conservation and drought measures should be considered as a threat to public health and safety for this emergency order. Conservation and Drought contingency planning are necessary for the public welfare. The Executive Director recommends that the finding be stricken.

~~As flow decreases through the pipes due to deepening water restrictions, including possible cutoff of outdoor watering, conditions can occur with disinfection residuals dissipating and dropping below the state minimum requirements, particularly in warmer weather. This has a potential health risk from biological growth of organisms in the system.~~

8. New Finding of Fact No. 42g: The Executive Director has the same exception to this finding as it has for Finding of Fact No. 41a. He has not evaluated any ramifications

of complying with LCRA's firm customers' Water Conservation Plan and Drought Contingency Plans and he questions whether operational issues that may result from taking conservation and drought measures should be considered as a threat to public health and safety for this emergency order. Conservation and Drought contingency are required and made for the public welfare. The Executive Director recommends that the finding be stricken.

~~With deepening watering restrictions, there is an increased risk of illegal cross connections, which are an extremely dangerous public health risk. Likewise, there is an increased of development of unregulated graywater systems, which carries health risks.~~

9. New Finding of Fact No. 49b: The Executive Director excepts to this finding because he believes that a 1.1 million AF trigger is reasonable and provides relief for LCRA for the duration of this emergency order. The finding would be amended as follows:

~~An emergency order setting forth a trigger of 1.1 MAF is not a sufficient alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 1.1 million AF on March 1 and severe drought conditions return, analysis shows that combined storage would not fall ~~could fall~~ to 600,000 AF for 12 to 18 months. This trigger level is sufficient for this emergency order. before the end of the first crop irrigation season in 2015 and before most firm water customers having raw water intakes on Lake Travis can make adjustments to their raw water intake structures (if such adjustment are even feasible or practicable) requiring declaration of a DWDR.~~

10. Ordering Provision No. 4: The PFD recommends that the Emergency Order include a provision providing for an automatic 60-day renewal. The Executive Director agrees that the Commission has the authority to adopt an emergency order which provides for an automatic 60-day renewal if certain conditions continue to exist after the expiration of the 120-day term of the emergency order. The Executive Director included an automatic renewal provision in the emergency order that he issued on January 27, 2014. Texas Water Code Section 11.139(a), which provides the commission's authority to issue this emergency order, states that "(s)uch emergency action may be renewed once for not longer than 60 days." The statute does not require that the commission take any further action prior to renewal. It is consistent with the statutory language and within the agency's authority for the Executive Director or Commission, upon the issuance or affirmation of the emergency order, to find that if certain conditions continue to exist at the expiration of the order, an imminent threat to the public health and safety remains in place, and the order is automatically extended for 60 days.

Therefore, the Executive Director respectfully requests that the recommended changes be made to the Commission's Emergency Order.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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ATTORNEY FOR THE
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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2014, "The Executive Director's Comments and Exceptions" was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas and State Office of Administrative Hearings and sent via email to the parties.

Robin Smith
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